

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 571 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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SONI BHUDARBHAI RANCHHODBHAI DECD. THRO HIS HEIRS

Versus

CHANDRAKANTBHAI S DEDHI  
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Appearance:

1. Civil Revision Application No. 571 of 1990  
MS KJ BRAHMBHATT for Petitioner  
MR SURESH M SHAH for Respondent  
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 19/04/2005

ORAL JUDGEMENT

1. This Revision Application preferred under Section 29 (2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act") arises from Misc. Civil Application No.334/1981

preferred by the respondent - landlord for permission to make construction over the suit shop under Section 13A of the Rent Act.

2. The premises in question is a shop 15 ft.x 22 & 1/2 ft. and of 14 ft. height situated at Rajkot. The suit shop was purchased by the respondent in the year 1965. The suit shop was leased to the petitioner by the predecessor in title of the respondent for a monthly rent of Rs.40=00. The petitioner is running the business of silver articles in the suit shop. For the purpose of his business, he has installed certain cutting machines and other machines in the suit shop. The suit shop is a single storeyed building with tiled roof. The respondent moved the above Misc. Civil Application No.334/1981 for permission to construct a floor over the existing structure of the suit shop by replacing the tiled roof by R.C.C. slab. For the said purpose he required the space admeasuring 2 & 1/2 ft. for placing the staircase.

3. The application was contested by the petitioner. According to the petitioner, under the guise of application under Section 13A, the respondent intended to dispossess the petitioner from the part of the suit shop. The replacement of tiled roof by R.C.C. slab would cause undue hardship to the petitioner. It was also stated that the petitioner has constructed a loft. If the respondent were permitted to make the construction over the existing structure, the petitioner shall lose the loft. Thus his business would be adversely affected. The trial Judge framed the issue "whether there are sufficient grounds to grant required facility to the applicant under Section 13A of BRC Act as requested by him". The trial Judge was of the opinion that for the purpose of Section 13A the tenant cannot be dispossessed from the suit premises or any part thereof; that the construction of staircase would amount to loss of some space to the petitioner and that the petitioner shall lose the facility of the loft and the chimney. The trial Judge therefore, by judgment and order dated 7th July, 1984, rejected the application. Feeling aggrieved the respondent preferred Civil Appeal No.114/1984. The appeal came to be heard and decided by the learned Joint District Judge. The lower appellate court was pleased to allow the application made by the respondent on the terms and conditions mentioned in the order. Feeling aggrieved the petitioner - tenant has preferred the present Revision Application.

4. Ms.Brahmbhatt has assailed the order of the lower appellate Court. She has vehemently argued that under

the guise of application under Section 13A of the Rent Act the petitioner is being dispossessed from the part of the suit shop in which he has been running his business for the last 50 years or more. She has also submitted that the construction of staircase would adversely affect the security. The petitioner shall also lose the loft and the chimney which is required for his business.

5. I am unable to agree with Ms.Brahmbhatt. The lower appellate Court has correctly considered and determined the application made under Section 13A of the Rent Act. The lower appellate Court has also provided for sufficient safeguards so as to minimize the inconvenience that may be caused to the petitioners. No interference is, therefore, warranted. Revision Application is dismissed. Rule is discharged. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)  
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